IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 581 to 587 of 2004

to

FIRST APPEAL NO.1068 TO 1075 OF 2004

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

DESAI VAGHUBHAI JALABHAI

Appearance:

MR A.D. OZA, GP for the State.

MR AMIT C NANAVATI for the Claimants

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1.0 Heard the learned counsel for the respective parties. Appeals admitted. Mr. Amit C. Nanavati, and Mr. A.D. Oza, learned GP, waive service on behalf of the original claimants and State of Gujarat respectively.

2.0 On the joint request of learned counsel for the respective parties these appeals are taken up for final hearing today.

3.0 Appeal Nos.581 to 587 of 2004, at the instance of State of Gujarat and Appeal Nos.1068 to 1075 of 2004 at the instance of original claimants are filed under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

3.1 The lands in question were acquired for the purpose of Narmada Canal Project. The acquired lands are situated in the village Surpura, Taluka Chanasma, District Mehsana. The relevant notification under section 4 of the Act was issued on 31.7.1992. Section 6 notification was published on 4.1.2003.

3.2 The claimants were not served with the notice of hearing as required under section 9(3)(4) of the said Act and therefore they could not produce any material for claiming higher valuation of the acquired land before the Special Land Acquisition Officer in writing. However the claimants appeared before the Special Land Acquisition Officer and made their oral submissions. The claimants claimed Rs.30/- per square metre for the acquired land. The Special Land Acquisition Officer declared the award under section 11 of the said Act and paid Rs.2.70 per square metre for irrigated land and Rs.1.80 ps per square meter for non-irrigated land to the claimants, which the claimants accepted under protest and objection.

3.3 Dissatisfied with the compensation determined by Special Land Acquisition Officer, the claimants preferred Land Acquisition Reference Nos.829 to 836 of 1996 before the Reference Court under section 18 of the said Act. The Reference Court, after appreciation of the evidence on record, determined the land value at Rs.19/- in all per square metre and granted compensation at this rate. However, in clause [6] of the award the Reference Court held that the claimants are not entitled to get the compensation on the amount which is awarded under section

23(2) and 23(1-A) of the Act and also not entitled to get 12% price difference on the amount so awarded under the aforesaid section.

4.0 It is this common judgement and awards which is the subject matter of the present group of appeals at the instance of the State as also the original claimants.

5.0 We have heard the learned counsel for the respective parties and carefully perused the impugned judgement and awards. We have also perused the oral and documentary evidence on record to which our attention has been drawn.

5.1 Mr. A.D. Oza, learned GP for the State submitted that the amount which is awarded by the Special Land Acquisition Officer is quite just and proper. He further contended that the Reference Court has committed an error in relying the award of reference of nearby village and further contended the Reference Court has committed an error in granting 9% interest from the date of issuing the notification under section 4 of the Act.

5.2 Before the Reference Court the claimants had contended that their lands are irrigated lands; that they are taking three crops during the year including commercial crops like rice, castor seeds, muster seeds and cotton seeds, etc. On behalf of the claimants witness Varavabhai Virabhai Desai was examined at Exh.13 and he has produced the previous judgement of the same Court in respect of the lands situated at village Chandroda at Exh.12. The Reference Court has come to the conclusion that since the simada of village Surpura and Chandroda is the same, the market value of the land in the previous judgement can be accepted. The notification under section 4, in respect of the land situated at village Chandroda i.e. the judgement at Exh.12 is published on 18.10.1984, whereas the corresponding notification in the present case is dated 31.7.1992. Since there is a gap of 8 years and considering the 10% price rise the Reference Court held that the claimants are entitled to get Rs.19/- per square metre.

5.3 While determining the market value the Reference Court has relied upon the decision of this Court in the case of Special Land Acquisition Officer, Kaira Vs. Shantibhai Jivabhai Patel, reported in 1993(2) GLR page 1289, wherein it was held that the market value be considered by the authority as on the date of publication of Notification under section 4 of the said Act. In the case of State of Madras Vs. A.M. Nanjan and others,

reported in AIR 1996 page 473 it is held that an award passed by a competent court, if comparable, would be relevant for fixation of the compensation and even if that award relates to the land in nearby area or town, it can be considered comparable having regard to reasonable proximity. The same view is also taken by the Apex Court in the case of Karan Singh and Ors. Vs. Union of India, reported in 1997 (8) SCC 186. Mr. Amit C.Nanavati has stated that the judgement at Exh.12, which has been relied upon by the Reference Court has been accepted by the State Government. In the case of Thakarsibhai Devjibhai Vs. Executive Engineer, Guajrat reported in AIR 2001 SC 2424 it is held that so far the question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. Under the circumstances, the Reference Court was perfectly justified in awarding Rs.19/- per square metre by way of compensation.

5.4 However, there is substance in the contention of Mr. Oza that the Reference Court has committed an error in granting 9% interest from the date of issuance of notification under section 4 of the Act. In view of the statutory provisions, the interest can be awarded either from the date of possession or from the date of award. Therefore, the impugned award is required to be modified to the aforesaid extent.

6.0 The only contention raised on behalf of the original claimants is that the Reference Court has not awarded interest on the amount which was awarded under sections 23(2) and 23(1-A) of the Act. Learned counsel for the original claimants has submitted that in view of the judgement of the Supreme Court in the case of N.I. Trust Vs. Vasant Rao, reported in 2002(7) SCC 657 [= AIR 2002 SC 3499 = 2003(1) GLH 140] the claimants are entitled to get interest on the amount payable to them under sub-section (1-A) or section 23 of the said Act. Mr. A.D. Oza, learned GP, has fairly conceded that the claimants are entitled to interest on the amount awarded under section 23(1-A) and (2) of the said Act. We, therefore, hold that the claimants are entitled to interest on the amount awarded under section 23(1-A) & (2) of the said Act.

7.0 Accordingly the First Appeal Nos.581 to 587 of 2004 filed by the State Government are partly allowed. The judgement and award of the Reference Court is

modified to the extent that the claimants will be entitled to claim interest from the date of possession or from the date of award, whichever is earlier. No order as to costs. Decree shall be drawn accordingly.

7.1 The appeal Nos.1068 to 1075 of 2004 filed by the original claimants are partly allowed. It is held that the claimants are entitled to get interest on the amount awarded under section 23(1-A) & (2) of the Act. The common judgement and award of the Reference Court is modified to the aforesaid extent. No order as to costs. Decree shall be drawn accordingly.

[KSHITIJ R. VYAS,J.]

[K.S. JHAVERI, J.]

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